

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 10cv2653-L(WMC)

BETTY LEWIN,

Plaintiff,

v.

NEW ENGLAND LIFE INSURANCE
COMPANY, *et al.*,

Defendants.

**ORDER REMANDING ACTION TO
STATE COURT**

On December 23, 2010 Defendant New England Life Insurance Company (“New England”) filed a notice of removal, removing this fraud action from State court. The notice of removal is based on diversity jurisdiction pursuant to 28 U.S.C. §§ 1332 and 1441.

“Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution or a statute, which is not to be expanded by judicial decree. It is to be presumed that a cause lies outside this limited jurisdiction and the burden of establishing the contrary rests upon the party asserting jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *see also Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006). “Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the

1 United States for the district and division embracing the place where such action is pending." 28
2 U.S.C. §1441(a).

3 Consistent with the limited jurisdiction of federal courts, the removal statute is strictly
4 construed against removal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992);
5 *see also Sygenta Crop Prot. v. Henson*, 537 U.S. 28, 32 (2002); *O'Halloran v. University of*
6 *Wash.*, 856 F.2d 1375, 1380 (9th Cir. 1988). "Federal jurisdiction must be rejected if there is
7 any doubt as to the right of removal in the first instance." *Gaus*, 980 F.2d at 566. "The strong
8 presumption against removal jurisdiction means that the defendant always has the burden of
9 establishing that removal is proper." *Id.*; *see also Nishimoto v. Federman-Bachrach & Assoc.*,
10 903 F.2d 709, 712 n.3 (9th Cir. 1990); *O'Halloran*, 856 F.2d at 1380. "The traditional rule of
11 burden allocation in determining removal jurisdiction was meant to comport with what the
12 Supreme Court has termed "[t]he dominant note in the successive enactments of Congress
13 relating to diversity jurisdiction,' that is, 'jealous restriction, of avoiding offense to state
14 sensitiveness, and of relieving the federal courts of the overwhelming burden of business that
15 intrinsically belongs to the state courts in order to keep them free for their distinctive federal
16 business.'" *Abrego Abrego*, 443 at 685, quoting *Indianapolis v. Chase Nat'l Bank*, 314 U.S. 63,
17 76 (1941).

18 New England removed this action based on diversity jurisdiction under 28 U.S.C. Section
19 1332(a). Original jurisdiction exists in cases of complete diversity, where each of the plaintiffs
20 is a citizen of a different state than each of the defendants, and the amount in controversy
21 exceeds \$ 75,000. 28 U.S.C. §1332(a); *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996).

22 One of the named Defendants in this case is Wells Fargo Advisors, LLC, a Delaware
23 limited liability company. New England insufficiently stated the citizenship of this Defendant.
24 It alleged that Wells Fargo Advisors, LLC was "organized under the laws of the State of
25 Delaware with its principal place of business located in Missouri." (Notice of Removal at 4.)
26 This is insufficient for determination of citizenship of a limited liability company under section
27 1332. The citizenship of a limited liability company is determined by examining the citizenship
28 of each of its members. *Carden v. Arkoma Assoc.*, 494 U.S. 185, 195-96 (1990). New England


1 does not allege the citizenship of any members of Wells Fargo Advisors, LLC. Accordingly,
2 New England did not adequately allege the citizenship of Wells Fargo Advisors, LLC, and
3 therefore failed to meet its burden of establishing removal jurisdiction. "If at any time before
4 final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be
5 remanded." 28 U.S.C. § 1447(c).

6 Furthermore, the complaint names five Defendants, but only New England is the
7 removing party. The remaining four Defendants have not joined in the removal. "Section 1446
8 requires all proper defendants to join or consent to the removal notice." *Prize Frize, Inc. v.*
9 *Matrix (U.S.), Inc.*, 167 F.3d 1261, 1266 (9th Cir. 1999), overruled on other grounds in *Abrego*
10 *Abrego*, 443 F.3d 676. "Where fewer than all the defendants have joined in a removal action,
11 the removing party has the burden under section 1446(a) to explain affirmatively the absence of
12 any co-defendants in the notice for removal." *Id.* No attempt to explain is made in the notice of
13 removal. Accordingly, the notice of removal is defective on its face.

14 Based on the foregoing, this action is **REMANDED** to the Superior Court of the State of
15 California for the County of San Diego.

16 **IT IS SO ORDERED.**

17 DATED: January 3, 2011

18 
19 M. James Lorenz
United States District Court Judge

20 COPY TO:

21 HON. WILLIAM McCURINE, Jr.
22 UNITED STATES MAGISTRATE JUDGE

23 ALL PARTIES/COUNSEL
24
25
26
27
28